



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1995

Ms. Barbara Elliott-Roberts
City Attorney
Legal Department
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR95-142

Dear Ms. Elliott-Roberts:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29318.

The City of Galveston (the "city") has received the following request for information concerning Jet Tech, Inc. ("Jet Tech"), a fuel base operator at the Galveston Municipal Airport (the "airport"):

- (1) reports of fuel sold by Jet Tech from June 1, 1993 through August 31, 1994;
- (2) correspondence sent to Jet Tech to attempt to collect the rents (flowage fees) they are refusing to pay and any written correspondence from them in answer; and
- (3) correspondence showing the city has attempted to make Jet Tech provide a hangar and mechanic as is required in their lease, and any documents, if any, attempting to show proof that Jet Tech is providing such.

You state that the city does not have reports showing the amount of fuel sold *by* Jet Tech, although it does have reports showing the amount of fuel sold *to* Jet Tech. A governmental body should make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). However, the city does not have to

supply information that is not in its possession. Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information); 483 (1987) at 2; 362 (1983) at 2 (city does not have to supply information that does not exist). You state that the city has correspondence responsive to the request, but assert that correspondence is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted information showing that another fuel base operator, B.J. Aviation Inc. ("B.J.") is suing the city. One of the issues in that lawsuit concerns the city's requirements for Jet Tech's operations at the airport and whether Jet Tech actually met those requirements. Our review of the correspondence at issue shows that it is related to the subject matter of the litigation. Since the city has met its burden of showing the applicability of section 552.103(a), the correspondence at issue may be withheld from disclosure.¹

In reaching this conclusion, we assume that the opposing party in the pending litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the pending litigation has seen or had access to the correspondence, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

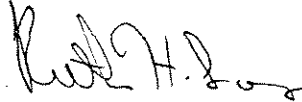
¹The requestor, whose company is suing the city, sent this office a letter stating:

The [request], for report of fuel sold, has little to do with the lawsuit my company has with the city. I, personally, would like to have that information. After the lawsuit was filed we asked for, and received, such a report up to May 1993. Jet Tech wanted and was receiving the same information from my company. We made an agreement with Jet Tech whereby either of us could get copies of records of fuel sales. Jet Tech continues to get that information on [B.J. Aviation, Inc.] with no formal request, they just ask the airport manager and he provides it. Therefore, we are entitled to a reciprocal flow of information.

The city has indicated that it does not have information as to the amount of fuel sold by Jet Tech. Any agreement made between B.J. and Jet Tech to exchange information is outside the scope of this decision.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 29318

Enclosures: Submitted documents

cc: Mr. Bill Brown
2427 Commence
Galveston, Texas 77554
(w/o enclosures)